Supreme Court, U. S.
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in the

Supreme Court

of the

United States

CASE NO. 78-1401

CITY OF MIAMI,
a Florida municipal corporation,
Appellant,

vs.

ST. JOE PAPER COMPANY, a Florida corporation; SOUTHEAST PROPERTIES, INC., a Florida corporation; HUGH E. MATHESON, JR., individually; and SALLY S. DOMMERICH, formerly Sally S. Matheson, individually,
Appellees.

On Appeal from the Supreme Court of Florida

APPELLEE ST. JOE PAPER COMPANY'S MOTION TO DISMISS OR, IN THE ALTERNATIVE, MOTION TO AFFIRM

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APPELLEE ST. JOE PAPER COMPANY'S MOTION TO DISMISS OR, IN THE ALTERNATIVE, MOTION TO AFFIRM

Appellee St. Joe Paper Company ("St. Joe"), pursuant to Rule 16 of the Rules of this Court, respectfully moves the Court for the entry of an order dismissing this appeal on the ground that it does not present a substantial federal question or, alternatively, moves the Court for the entry of an order affirming the order appealed from on the ground that any federal question raised by this appeal is insubstantial and does not need further argument.

RESTATEMENT OF THE FACTS

By warranty deed dated December 15, 1898, Henry M. Flagler conveyed to Florida East Coast Hotel Corporation portions of the mainland located north of the Miami River and adjacent to Biscayne Bay "containing fourteen acres, more or less, together with all and singular riparian rights and submerged lands appertaining thereto."

On June 2, 1919, the Florida Legislature passed a special Act granting to appellant, City of Miami (the "City"), all of the State of Florida's rights, title and interest to certain submerged lands of Biscayne Bay abutting the City's shoreline. This grant by the State to the City specifically provided that it did not affect any other grant made to any individual or corporation and that nothing therein shall be construed as depriving any riparian owner or proprietor of any rights.

By warranty deed dated January 10, 1944 (the "Deed"), Florida East Coast Hotel Corporation conveyed to St. Joe the property at issue in this lawsuit — which is a portion of the property originally conveyed by Flagler to Florida East Coast Hotel Corporation in 1898. Except for a yacht basin, the property which was conveyed to St. Joe in 1944 had been bulkheaded and filled by Florida East Coast Hotel Corporation in or about 1920.

The City makes a great deal in its Jurisdictional Statement of the purported fact that the Deed to St. Joe was *"a wild deed of which it [the City] had no notice."*[1]

[1]City's Jurisdictional Statement at 31. Emphasis in original.

The City's unsupported representation that it had no actual notice of St. Joe's claim to the property is not true, and is inconsistent with the record of this case. The record clearly shows that by at least February 3, 1949 — well before any purported competing claim of the City was extinguished by the Florida Marketable Record Title Act (the "Act") on January 10, 1974 — the City indeed had actual notice of St. Joe's claim to and possession of the property.

On February 3, 1949, St. Joe recorded a plat of the lands involved, and the record shows that the plat was approved by the City prior to its recordation. *See City of Miami v. St. Joe Paper Company,* 364 So.2d 439, 442 (Fla. 1978). Some time after the Deed was recorded on January 10, 1944, St. Joe openly filled and bulkheaded the yacht basin, which constitutes a part of this property. Subsequent to recording the Deed, St. Joe was assessed by the City and continuously paid ad valorem taxes on the property to the City — the property being carried on the City's tax rolls as owned by St. Joe.[2] On February 12, 1973, almost one year before the Act's bar, the City instituted an unsuccessful action in municipal eminent domain to condemn St. Joe's property for park purposes.[3] And St. Joe has openly been in actual possession of the property since 1944.

[2]At the hearing on St. Joe's motion to dismiss the City's amended complaint, the trial judge took judicial notice that St. Joe paid such taxes.

[3]The condemnation action is a matter of public record, having been filed in the Circuit Court for the Eleventh Judicial Circuit in and for Dade County, Florida and given Case No. 73-2506. Mention of such condemnation action is prompted by the City's gross misrepresentation to this Court quoted above.

Effective July 1, 1963, the Florida Legislature passed the Act, Chapter 712 of the Florida Statutes ("Fla.Stat."), whose purpose is to eliminate automatically with the passage of time old title defects in interest, shorten the necessary title examinations, and promote and encourage free alienation of real property.

The Act extinguishes, with certain specified exceptions, all claims of thirty years or more which conflict with a record chain of title which is at least that old. Fla.Stat. §712.01.

In addition to providing that the Act shall not extinguish certain claims of the United States or Florida, the Act lists six exceptions[4] to its bar to claims made 30

[4]Because of its importance, Fla.Stat. §712.03 is set out below in its entirety:

> "712.03. EXCEPTIONS TO MARKETABILITY. — Such marketable record title shall not affect or extinguish the following rights:
>
> (1) Estates or interests, easements and use restrictions disclosed by and defects inherent in the muniments of title on which said estate is based beginning with the root of title; provided, however, that a general reference in any of such muniments to easements, use restrictions or other interests created prior to the root of title shall not be sufficient to preserve them unless specific identification by reference to book and page of record or by name of recorded plat be made therein to a recorded title transaction which imposed, transferred or continued such easement, use restrictions or other interests; subject, however, to the provisions of subsection (5).
>
> (2) Estates, interests, claims or charges preserved by the filing of a proper notice in accordance with the provisions hereof.

years after the effective date of the root of title.[5]

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(3) Rights of any person in possession of the lands, so long as such person is in such possession.

(4) Estates, interests, claims, or charges arising out of a title transaction which has been recorded subsequent to the effective date of the root of title.

(5) Recorded or unrecorded easements or rights, interest or servitude in the nature of easements, rights-of-way and terminal facilities, including those of a public utility or of a governmental agency, so long as the same are used and the use of any part thereof shall except from the operation hereof the right to the entire use thereof. No notice need be filed in order to preserve the lien of any mortgage or deed of trust or any supplement thereto encumbering any such recorded or unrecorded easements, or rights, interest, or servitude in the nature of easements, rights-of-way, and terminal facilities. However, nothing herein shall be construed as preserving to the mortgagee or grantee of any such mortgage or deed of trust or any supplement thereto any greater rights than the rights of the mortgagor or grantor.

(6) Rights of any person in whose name the land is assessed on the county tax rolls for such period of time as the land is so assessed and which rights are preserved for a period of 3 years after the land is last assessed in such person's name."

[5]Root of Title means:

"any title transaction purporting to create or transfer the estate claimed by any person and which is the last title transaction to have been recorded at least 30 years prior to the time when marketability is being determined. The effective date of the root of title is the date on which it was recorded." Fla.Stat. §712.01(2).

Thus, under the Act, in order to prevent its claim from being extinguished 30 years after another person's subsequent title transaction[6] is recorded, the claimant need only perform *one* of the following acts, *inter alia:*

1. File for record a simple written notice of claim anytime during the 30 year period immediately following the effective date of the root of title. Fla.Stat. §712.03(2).

2. Take possession to the lands anytime during the 30 year period immediately following the effective date of the root of title and continue in such possession. Fla.Stat. §712.03(3).

3. Record a title transaction subsequent to but within 30 years from the effective date of the other person's root of title. Fla.Stat. §712.03(4).

4. Cause the land to be carried on the tax rolls in the name of the claimant. Fla.Stat. §712.03(6).

Thus, according to the Act, the City had until January 10, 1974 (almost 11 years after the effective date of the Act) within which to assert or protect any claim it might have had to the property. The City could have commenced a lawsuit during that time, but it did not. The City could have but did not file a notice of claim in accordance with the provisions of the Act. The City could have and should have taken possession of the property if it owned it, but of course it did not. The City did not record a title transaction to the property. The

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[6]"Title transaction means any recorded instrument or court proceeding which affects title to any estate or interest in land." Fla.Stat. §712.01(3).

City could have caused the land to be carried on the tax rolls in its (the City's) name; instead, the City carried the land on the tax rolls as being owned by St. Joe and the City assessed and collected taxes from St. Joe. Indeed, nowhere is it alleged that any time after June 2, 1919 (the date of the grant by the Florida Legislature that the City now relies on as creating its claim to the property) did the City ever exercise or seek to exercise any ownership right in the property, until September 2, 1975 when it filed this lawsuit.

Thus, even according to the City's own allegations, for a period of over 56 years prior to the filing of this lawsuit St. Joe and its predecessors in title exercised every possible incident of ownership to the property. The City never exercised *any* incident of ownership.

THIS COURT SHOULD DISMISS OR AFFIRM THIS APPEAL BECAUSE IT DOES NOT PRESENT ANY SUBSTANTIAL FEDERAL QUESTION

The expressed legislative purpose of the Act is to simplify and facilitate land title transactions by allowing persons to rely on record titles. Fla.Stat. §712.10. In light of such underlying aims, one Florida appellate court has declared that the Act "is undoubtedly the most important piece of legislation dealing with real property titles enacted in the State of Florida in many years".[7]

Currently, at least seventeen states[8] have marketable record title acts. High courts of other states unanimously have ruled that their respective marketable title acts are constitutional. *See Wichelman v. Messner,* 83 N.W.2d 800 (Minn. 1957) (in depth discussion of the act's constitutionality); *Tesdell v. Hanes,* 82 N.W.2d 119, 123 (Iowa 1957) ("We are satisfied the

[7]*Marshall v. Hollywood, Inc.,* 224 So.2d 743, 748 (Fla. 4 DCA 1969), *aff'd.,* 236 So.2d 114 (Fla.), *cert. denied,* 400 U.S. 964 (1970).

[8]Conn. Gen. Stat. Title 47, Ch. 821 §47-33b to 33l (1967); Fla. Stat.Ann. Ch. 712; Ill. Ann. Stat. Ch. 83, §12.1-.4 (Smith-Hurd 1966 Supp. 1971); Ind. Ann. Stat. §§56-1011 to 1110 (Supp. 1967); Iowa Code Ann. §§614.17-.20 (1946, Supp. 1966); Kan. Stat. Ann. §§58.3401 to 3412 (1974); Mich. Comp. Laws §§565.101-109 (1967); Minn. Stat. Ann. §541.023 (Supp 1966); Neb. Reve. Stat. §§76-288 (1958); N.C. Gen. Stat. Chap. 47B (1973); N.D. Cent. Code §§47-19A-01 to 11 (1960); Ohio Rev. Code Ann. §§5301.47-.56 (1966 Page Supp. 1974); Okla. Stat. Ann. Title 16, §§71-81 (Supp. 1974); S.D. Compiled Laws Ann. 1967 43-40-1 through 15 (1967); Utah Code Ann. §57-0-1 to 10 (1963 Supp. 1975); Vt., Stat. Ann. 27-601 to 06 (1970); Wis. Stat. Ann. §893.15 (1966).

legislature had ample authority to make a limitation statute * * * subject to a condition that a reasonable time must elapse before it becomes effective".); *Lane v. Traveler's Insurance Company,* 299 N.W. 553, 555 (Iowa 1941) ("little doubt of the desirability of statutes giving greater effect and stability to record titles".) *See also* discussion in *Note, Constitutionality of Market Title Legislation,* 47 Iowa L.Rev. 413, 428-29 (1962).

This Court's many decisions on the constitutionality of other statutes of limitations show that the Act does not offend the Due Process, Taking or Contract Clauses of the Constitution of the United States. *See, e.g., City of El Paso v. Simmons,* 379 U.S. 497 (1965); *Mattson v. Department of Labor and Industries,* 293 U.S. 151 (1934) (Three year statute of limitations on application for readjustment of compensation held not a denial of due process on ground it destroyed vested right of employee injured before the statute of limitations' enactment.); *Home Building & Loan Ass'n. v. Blaisdell,* 290 U.S. 398 (1934); *Atchafalaya Land Co. v. F. B. Williams Cypress Co.,* 258 U.S. 190 (1922); *Turner v. People of State of New York,* 168 U.S. 90 (1897) (Statute making tax deed which had been on record for two years prior to the statute's passage conclusive evidence of the regularity of sale if not assailed by direct proceeding within six months after the statute took effect "is not repugnant to any provision of the Constitution of the United States."); *Vance v. Vance,* 108 U.S. 514 (1883) (Statute providing that existing tacit mortgages and privileges shall cease to have effect unless recorded within 20 months after the statute's enactment does not violate Due Process or Contract Clauses.); *Terry v. Anderson,* 95 U.S. 628 (1877).

In *City of El Paso v. Simmons, supra,* land was sold by the State of Texas in 1910 under a statute providing for forfeiture of land to the State in the event of nonpayment of interest under the contract for sale, and also providing that, in case of forfeiture, the purchaser or his vendee could reinstate his claim by paying the full amount of interest due. In 1941 the statute was amended to limit the right of reinstatement to five years from the date of forfeiture. The land in question was forfeited on July 21, 1947, plaintiff took quick claim deeds and on July 23, 1952 filed untimely applications for reinstatement. In holding that the amendment did not violate the Contract Clause, this Court said:

> "For it is not every modification of a contractual promise that impairs the obligation of contract under federal law, any more than it is ever alteration of existing remedies that violates the Contract Clause." 379 U.S. at 507-08.
>
> * * *
>
> "But we think the objects of the Texas statute make abundantly clear that it impairs no protected right under the Contract Clause." *Id.* at 509.
>
> * * *
>
> "The general purpose of the legislation enacted in 1941 was to restore confidence in the stability and integrity of land titles * * *." *Id.* at 511.
>
> * * *

"The Contract Clause of the Constitution does not render Texas powerless to take effective and necessary measures to deal with the above. We note at the outset that the promise of reinstatement, whether deemed remedial or substantive, was not the central undertaking of the seller nor the primary consideration for the buyer's undertaking." *Id.* at 513-14.

* * *

"The measure taken to induce defaulting purchasers to comply with their contracts, requiring payment of interest in arrears within five years, was a mild one indeed, hardly burdensome to the purchaser who wanted to adhere to his contract of purchase, but nonetheless an important one to the State's interest. The Contract Clause does not forbid such a measure." *Id.* at 516-17.

Home Building & Loan Ass'n. v. Blaisdell, supra, involved a statute enlarging the mortgagor's right by extending the time of redemption, a measure that the state court characterized as an impairment of the obligation of the mortgage contract. There, this Court rejected the contention that this impairment contravened the Contract Clause. This Court stated:

"[Judicial decisions] put it beyond question that the prohibition is not an absolute one and is not to be read with literal exactness like a mathematical formula." 290 U.S. at 428.

* * *

"The economic interests of the State may justify the exercise of its continuing and dominant protective power notwithstanding interference with contracts." *Id.* at 437.

* * *

"The question is not whether the legislative action effects contracts incidentally, or directly or indirectly, but whether the legislation is addressed to a legitimate end and the measures taken are reasonable and appropriate to that end." *Id.* at 438.

Atchafalaya Land Co. v. F. B. Williams Cypress Co., supra, has already decided the City's claim of unconstitutionality. In *Atchafalaya* this Court determined that neither the Due Process nor Contract Clauses constitutionally prohibit the application of a statute of limitations enacted in 1912 to successors of a patent grantee from Louisiana in 1903. This Court stated:

"We are concerned alone with the power of the state to pass the statute of limitations of 1912, and we agree with the Supreme Court [of Louisiana] that such statutes are valid if they allow a reasonable time after their enactment, for the assertion of an existing right or the enforcement of an existing obligation, and certainly the condition was satisfied by the statute of 1912. Besides having over six years after its enactment to assert their rights, plaintiffs in error, adding their time and that of their predecessors, had nearly a quarter of a century to confirm and fix whatever rights they had to the lands in controversy.

Passing, however, all considerations of details and local aspects of the case, we are of the opinion that none of the invoked provisions of the Constitution of the United States are offended even under the construction plaintiffs in error give to the asserted grant to the Board of Commissioners and its conveyance to Wisner and Dresser. The act of prescription was a proper exercise of sovereignty. The state could recognize, as it did recognize, that there might be claims derived from it, asserted or to be asserted, rightfully or wrongfully, involving conflicts which should be decided and quieted in the public interest, and therefore, enacted the statute. And such is the rationale of statutes of limitations. They do not necessarily lessen rights of property or impair the obligation of contracts. Their requirement is that the rights and obligations be asserted within a prescribed time. If that be adequate, the requirement is legal, and its justice and wisdom have the testimony of the practices of the world." 258 U.S. at 196-97.

United States Trust Company v. New Jersey, 431 U.S. 1 (1977) and *Allied Structural Steel Company v. Spannaus*, 98 Sup.Ct. 2716 (1978), cited by the City, do not involve statutes of limitations nor do they conflict

with this Court's many prior decisions regarding statutes of limitations.[9]

In the case at bar, the Supreme Court of Florida found that the Act "is a comprehensive plan for forming conveyancing procedures." 364 So.2d at 442. In addition, the Court found that the Act, "designed to simplify conveyances of real property, stabilize titles and give certainty to land ownership, is certainly legislation concerning the welfare of the public." *Id.* at 444. Furthermore, unlike plaintiffs in *United States Trust Company v. New Jersey, supra,* and *Allied Structural Steel Com-*

[9]In *United States Trust Company v. New Jersey, supra,* the issue was whether the New Jersey Legislature could repeal its own statutory covenant which assured private investors in the interstate Port Authority that a certain portion of a reserve fund would be irrevocably placed as security for the investors' Port Authority bonds. After noting that "the Contract Clause does not prohibit the State from repealing or amending statutes generally, or from enacting legislation with retroactive effect" (431 U.S. at 17), this Court struck down the repealing statute. Its opinion gave great weight to the fact that bond holders had no way to avoid the drastic impact of the repeal upon the reserve funds that they had relied upon as security when investing in the Port Authority. Moreover, this Court found that the impairment of contract was not necessary to achieve the states' goal.

In *Allied Structural Steel Company v. Spannaus, supra,* an employer challenged the constitutionality of Minnesota's 1974 Private Pension Benefit Act. In holding that such act unconstitutionally impaired the employer's contractual obligations to its employees, this Court emphasized the "unexpected liability" the statute imposed and the utter impossibility of the employer's avoiding the act's retrospective application. 98 S.Ct. at 2724-25. In addition, this Court stated that "[t]he law was not even purportedly enacted to deal with a broad, generalized economic or social problem." *Id.* at 2725.

pany v. Spannaus, supra, the City had ten and one-half years to protect or assert the claim it now makes to the property.

The City contends that the Act cannot constitutionally be applied to a wild deed.[10] Yet, the City has failed to cite a single case in which a marketable record title act was held unconstitutional as applying to a wild deed. There are none. In *Wichelman v. Messner,* supra at 819, cited by the City, the court merely determined that the Minnesota act did not purport to cover a wild deed. The court stated:

> "We do not think that the statute lends itself to an interpretation to the effect that title may be founded on a stray, accidental, or interloping conveyance."

Thereafter, the Minnesota Legislature amended its act so that any recorded fee simple transaction will serve as a point of beginning for a chain of title contemplated by the act. Minnesota Laws 1959, Ch. 492, approved April 24, 1959. In *Exchange National Bank v. Lawndale National Bank,* 243 N.E.2d 193, 195 (Ill. 1968), cited by the City, the court expressly recognized that the Illinois act was different than those of other states in its application to a wild deed, stating:

[10]Such contention is different than the City's additional contention that the Supreme Court of Florida improperly interpreted the Act to permit a wild deed to form a root of title because a wild deed is void and of no effect. The latter contention involves questions of interpretation of State law and not Federal law.

> "Commentators in considering marketable title acts have recognized the possibility of two record titles existing at one time because of a 'wild deed' and in some States the possibility of this occurrence has been provided for by statute. (See Simes and Taylor, The Improvement of Conveyancing by Legislation, p. 353, 1960; Webster, the Quest for Clear Land Titles, (1965) 44 N.C.L. Rev. 89.) Our statute does not so provide."

In the article referred to above by J. Webster, *The Quest for Clear Land Titles,* 44 N.C. L. Rev. 89, 108-13 (1965), the author wrote that the North Carolina act applied to wild deeds because of sections therein which made the act inapplicable to extinguish the rights of those in possession and those who are listed as the owners on the county tax books. Unlike the Illinois statute, the Florida Act contains each of these exceptions contained in the North Carolina act. *See* Fla.Stat. §712.03(3) and (6).

In the instant case, the Supreme Court of Florida did not hold that every wild deed may act as a "root of title", but that "[t]his wild deed may properly constitute a 'root of title'." 364 So.2d at 448.

The City has failed to advance a single viable argument as to why the Deed constitutionally may not constitute a "root of title". The City contends that it had no prior notice of the Deed, it had no prior notice that the Act may apply to a wild deed, and that the Act's application to a wild deed is unreasonable. Of course, each of these arguments is at odds with the facts and is unsupported by the law.

As stated before, the City's claim that it had no notice of the Deed prior to the Act's extinguishing the City's claim misrepresents the facts. The City's prior actual notice of the Deed is shown by the City's approval of the plat recorded by St. Joe on February 13, 1949, by St. Joe's payments to the City of taxes on the property, and by the City's institution on February 12, 1973 of its unsuccessful action in municipal eminent domain to condemn the property.

The City's argument that, prior to the Act's extinguishing the City's claim, it had no notice the Act may apply to a wild deed is specious. The Supreme Court of Florida's interpretation in this case is the very same or similar to the interpretations made by that Court and two Florida district courts of appeal in three prior cases. *See Marshall v. Hollywood, Inc., supra; Wilson v. Kelly,* 226 So.2d 123 (Fla. 2 DCA 1969); *Whaley v. Wotring,* 225 So.2d 177 (Fla. 1 DCA 1969).

In view of the six exceptions engrafted in the Act, the City's argument that the Act unreasonably applies to wild deeds should also be rejected. In order to protect its claim, the City need only to have, *inter alia*, filed for record a simple written notice of claim any time during the ten and one-half year period immediately following the Act's passage, taken possession of the property any time during the 30 year period immediately following the recordation of the Deed and continued in such possession, recorded a title transaction subsequent to but within 30 years from the recordation of the Deed, or caused the property to be carried on the tax rolls in the name of the City. Having done none of these things, naturally the City now claims that the Act unreasonably applies to a wild deed and implies that the order appealed from will give aid and comfort to land pirates. However, in Comment, *Marketable Record Title Act: Forged and Void Deeds as Roots of Title*, 22 U. of Fla. L. Rev. 669 (1970), in discarding the argument that application of the Act to wild deeds will encourage land pirates, one commentator reasoned:

> "The contention should not be taken seriously because the situation found in the instant case rarely occurs. Since at least one title transaction will occur every thirty years on most real estate, Florida Statutes, section 712.03(4), should save the 'live' senior claim from extinguishment. Because of explicit safeguards in the Act few competing junior claims are likely to survive on record long enough to prevail. However, if a senior grantee is remiss in seeking the protection of the Act, then '[i]n the public interest of simplifying and facilitating land title transactions, it does not seem unreasonable for the legislature to create a presumption that one who is negligent in claiming his land has abandoned his claim'." 22 U. of Fla. L. Rev. at 673.

The City's argument that the application of the Act to a wild deed results in constitutional prohibitions does not present a substantial federal question. This is not a case where the City exercised ownership rights throughout the period in question and was surprised by an alleged wild deed surreptitiously filed in the dark of night. Indeed, had the City exercised any of a number of ownership rights during the 30 year period after the Deed was recorded or if the City had taken certain

enumerated steps to protect its claim during the ten and one-half year period after the Act became effective, the Act would not have extinguished the City's claim.

CONCLUSION

For the foregoing reasons, this Court should dismiss the City's appeal or, in the alternative, affirm the order of the Supreme Court of Florida.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 4th day of April, 1979, 3 copies of the above and foregoing Appellee St. Joe Paper Company's Motion to Dismiss or, in the Alternative, Motion to Affirm was mailed, postage prepaid, to Guy B. Bailey, Jr., Esquire, Suite 1820, One Biscayne Tower, Two South Biscayne Boulevard, Miami, Florida 33131; Steel, Hector and Davis, 1400 Southeast First National Bank Building, Miami, Florida 33131; and Russo, Van Doren and Allen, P.A., 4685 Ponce de Leon Boulevard, Coral Gables, Florida 33146. I further certify that all parties required to be served have been served.

Eric B. Meyers